

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

CRYSTAL SEAMAN,

*

*

PLAINTIFF,

*

*

VS.

*

CASE NO. 2:05-cv-414-WKW

*

FOOD GIANT SUPERMARKETS, INC.,

*

*

DEFENDANT.

*

OBJECTIONS TO DEFENDANT'S EXHIBIT LIST

COMES NOW, the Plaintiff, Crystal Seaman, and objects to the Defendant's Exhibit List as follows:

1. Defendant's Exhibits 1 and 2 (photographs of the ramp with and without carpets).

The Plaintiff has no objection to these photographs so long as the Defendant provides the proper foundation as to the photographs' authenticity. In prior depositions of the Plaintiff and her husband it was the Defendant's counsel who suggested that the photographs were an accurate depiction of the ramp which is material to this suit.

2. Defendant's Exhibit 9 (copies of Plaintiff's criminal record).

The Plaintiff objects to the reference to or attempted introduction of her criminal record as the same is barred under Fed. R. Evid. 609. The first record pertains to a 1998 misdemeanor conviction for retail theft (shoplifting), the introduction of which would be governed by Fed. R. Evid. 609(a)(2) - convictions for crimes involving dishonesty or false statements. The longstanding precedent in this Circuit has been that shoplifting does not involve dishonesty or false statements, and therefor is excluded under Fed. R. Evid. 609(a)(2). *United States v. Sellers*, 906 F.2d 597 (11th Cir. 1990). Both prongs of Fed. R. Evid. 609 allow impeachment of a witness by a showing of a

conviction, under certain circumstances. The second record pertains to a 2001 charge in which adjudication of guilt was withheld under a pretrial diversion agreement with the State of Florida. Under the laws of the State of Florida, this is not a conviction. *See attached letter from Kimberly Aller, Correctional Probation Officer.* As there has been no conviction in this matter, the same is barred under either Fed. R. Evid. 609.

Respectfully submitted this the 26th day of July, 2006.

s/ **Charles W. Blakeney**

Charles W. Blakeney, BLA068
Attorney for Plaintiff
Post Office Box 100
Geneva, Alabama 36340
334-684-2387

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Hon. H. Warren Butler, Hon. David J. Harrison, and Hon. Richard Brantly Johnson.

s/ **Charles W. Blakeney**

Charles W. Blakeney